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F. ORENE

F 456-5318

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
CIVIL CALENDAR AND MINUTES

RULINGS

DATE: FRI. JUNE 17, 1994 TIME: 9:00 REPORTER: J. KNETZGER
 OPPOSITION DUE: 6/10/94 JUDGE: GARY W. THOMAS CLERK: J. BENASSINI
 REPLY DUE: 6/15/94 DEPT. NO. 1 COMPLETED: _____

CASE NO.	TITLE OF ACTION	PROCEEDING	ATTORNEY
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18) 157680 CHURCH OF SCIENTOLOGY INTL.
 V
 GERALD ARMSTRONG, ET AL

THE DEMURRER TO THE SECOND AMENDED CROSS-COMPLAINT ON THE GROUND OF FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION IS OVERRULED. THE COURT AGREES THAT THE MAJORITY OF THE ALLEGATIONS ARE INSUFFICIENT AS WILL BE SHOWN BELOW. HOWEVER, TWO ALLEGATIONS SURVIVE CROSS-DEFENDANT'S CHALLENGE. IN PARAGRAPH 69, CROSS-COMPLAINANT ALLEGES THE FILING OF A FALSE DECLARATION IN A FEDERAL DISTRICT COURT ACTION. CONTRARY TO CROSS-DEFENDANT'S ARGUMENT, IT CANNOT BE DETERMINED FROM THE FACE OF THE COMPLAINT OR JUDICIALLY NOTICED MATTERS THAT THE ABSOLUTE JUDICIAL PRIVILEGE APPLIES. ALTHOUGH CROSS-DEFENDANT PROVIDES A COPY OF THE DECLARATION, THE COURT CANNOT NOTICE THE TRUTH OF STATEMENTS MADE IN THAT DECLARATION. (SEE SOSINSKY V. GRANT (1992) 6 CAL.APP.4TH 1548, 1564.) EVEN IF THE COURT COULD JUDICIALLY NOTICE THE TRUTH OF THE DECLARATION, CROSS-DEFENDANT HAS FAILED TO SHOW HOW STATEMENTS ABOUT CROSS-COMPLAINANT, A NON-PARTY TO THAT ACTION, WERE MADE TO ACHIEVE THE OBJECTS OF THE LITIGATION OR WERE RELEVANT OR CONNECTED. IN PARAGRAPH 73, CROSS-COMPLAINANT ALLEGES USE OF THE DISCOVERY PROCESS TO OBTAIN INFORMATION FOR IMPROPER PURPOSES. CROSS-DEFENDANT'S PRIVILEGE ARGUMENT FAILS IN THAT THE ALLEGATION DOES NOT INVOLVE COMMUNICATION. THE ALLEGATIONS SUPPORTS A CLAIM OF ABUSE OF PROCESS. (SEE YOUNGER V. SOLOMON (1974) 38 CAL.APP.3D 289, 296-298.) THE REMAINING ALLEGATIONS ARE DEFICIENT AS FOLLOWS:

¶59 - CONCLUSORY

¶¶60-62 - BACKGROUND ALLEGATIONS. OTHERWISE BARRED BY STATUTE OF LIMITATIONS. (KAPPEL V. BARTLETT (1988) 200 CAL.APP.3D 1457, 1467.)

¶¶64-67 - NO USE OF "PROCESS." ALLEGATIONS DO NOT SHOW ACTION TAKEN PURSUANT TO JUDICIAL AUTHORITY OR WITH REFERENCE TO THE POWER OF THE COURT. (SEE ADAMS V. SUPERIOR COURT (1992) 2 CAL.APP.4TH 521, 530.)

¶68 - NO ACTION TAKEN AGAINST CROSS-COMPLAINANT.

¶69 (ALLEGATION RE: PURSUIT OF LIQUIDATED DAMAGES) - MERE MAINTENANCE OF LAWSUIT FOR IMPROPER PURPOSE IS NOT AN ABUSE OF PROCESS. (OREN ROYAL OAKS VENTURE V. GREENBERG, BERNHARD, WEISS & KARMA, INC. (1986) 42 CAL.3D 1157, 1169.)

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18) 157680 CONTINUED: CHURCH OF SCIENTOLOGY V. ARMSTRONG

¶170-72 - NO USE OF "PROCESS."

¶73 (ALLEGATION RE: REFUSAL TO ACKNOWLEDGE PROOF) - NO USE OF "PROCESS."

¶74 - PURSUIT OF LITIGATION FOR IMPROPER PURPOSE NOT AN ABUSE OF PROCESS. (OREN ROYAL OAKS VENTURE, SUPRA, 42 CAL.3D AT 1169.)

THE DEMURRER ON THE GROUND OF ANOTHER ACTION PENDING IS OVERRULED. THE CLAIMS IN THIS ACTION ARE NOT IDENTICAL TO THOSE IN THE LOS ANGELES ACTIONS IN THAT THE CLAIMS IN THIS ACTION INVOLVE CROSS-DEFENDANT'S CONDUCT IN THIS ACTION, NOT THE LOS ANGELES ACTIONS.

THE MOTION TO STRIKE IS GRANTED AS TO PARAGRAPHS 9 THROUGH 54. THOSE ALLEGATIONS ARE BACKGROUND AND ARE NOT ESSENTIAL TO THE STATEMENT OF CROSS-COMPLAINANT'S ABUSE OF PROCESS CLAIM. (CODE CIV. PROC., § 431.10.)